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January 25, 2001

VIA FACSIMILE AND FIRST-CLASS MAIL

Gary M. Stern
General Counsel
National Archives and Records Administration
8601 Adelphi Road
College Park, Maryland 20740-6001

James H. Thessin
Acting Legal Adviser
United States Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Messrs. Stern and Thessin:

We are writing on behalf of our client, the National Security Archive, concerning certain records that were improperly removed from the Department of State by then-Secretary of State Henry Kissinger in 1976. These records, which include transcripts of Mr. Kissinger's telephone conversations while he was Secretary of State (the "telephone transcripts"), are currently housed at the Library of Congress pursuant to a purported deed. The telephone transcripts remain under the control of Mr. Kissinger and are unavailable to the public.

The telephone transcripts are agency records as defined by federal law and, as a consequence, your agencies have a legal obligation to seek the return of such materials for declassification review and public disclosure. The National Security Archive brought this matter to the attention of the Archivist by letter dated January 15, 1999 (a copy of which is attached to this letter as Exhibit A), requesting that the Archivist fulfill his statutory obligation to secure the return of the telephone transcripts. No such action was taken, although the Archivist apparently corresponded with the Secretary of State in January 2000 regarding the telephone transcripts. The State Department responded by asserting that Mr. Kissinger has agreed to a review of the telephone transcripts by certain State Department historians, and that this process should go forward before any other review is considered (see Exhibit B which is attached hereto).

CHICAGO CHARLOTTE COLOGNE HOUSTON LONDON LOS ANGELES NEW YORK WASHINGTON
INDEPENDENT MEXICO CITY CORRESPONDENT: JAUREGUI, NAVARRETE, NADER Y ROJAS
INDEPENDENT PARIS CORRESPONDENT: LAMBERT & LEE

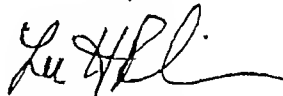
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That limited review, which is being conducted pursuant to terms set by Mr. Kissinger, does not satisfy your agencies' obligations under federal law. Mr. Kissinger has no authority to dictate the terms of access to the telephone transcripts by agency officials charged with the responsibility of preserving federal agency records. Your agencies' acquiescence in Mr. Kissinger's continued assertion of control over the telephone transcripts is an abdication of your agencies' statutorily mandated obligations. Federal law requires that the Secretary of State and the Archivist initiate action through the Attorney General to recover the telephone transcripts so that they may be preserved as federal records, reviewed for declassification and, where, appropriate, made accessible to the public.

Because the State Department and the National Archives and Records Administration's failure to recover these records constitutes a violation of federal law, we intend to seek judicial relief, if necessary, to ensure your agencies' compliance with statutory obligations. We are writing to you in advance of taking such action in the hope that an acceptable resolution might be reached short of litigation. For your information, we have attached a complaint that we intend to file if no such resolution can be reached.

We welcome the opportunity to discuss this matter with you. Please contact us on or before February 13, 2001. If we do not hear from you by that date, we intend to proceed with the attached complaint. We look forward to hearing from you.

Sincerely,



Lee H. Rubin
Craig Isenberg

Attachments

cc: Kate Martin
(General Counsel, National Security Archive)

United States Department of State

Assistant Secretary of State
for Public Affairs
and Department Spokesman
Washington, D.C. 20520-7261

March 17, 2000

Dear Governor Carlin:

Thank you for your letter of January 27 to Secretary Albright regarding the papers of former Secretary of State and National Security Adviser Henry Kissinger currently deposited at the Library of Congress. Please be assured that we at the Department of State share your concern about the preservation and public access to this historically valuable collection of documentation on the most important aspects of the foreign policy record of the United States.

As you are aware, in 1998 Dr. Kissinger agreed to a request from Secretary Albright to provide access to his papers for the Department's historians, who are preparing the official foreign affairs record of the Nixon and Ford presidencies for publication in the *Foreign Relations of the United States* series. Under the arrangements, Dr. Kissinger granted Department historians full and complete access to his papers, including the unexpurgated transcripts and summaries of telephone conversations that spawned the litigation and subsequent ruling in 1980 and are the primary focus of your concern. As a result of research in these transcripts and summaries since the beginning of 1999, Department historians have thus far reviewed up to 40 percent of the materials and have obtained copies of about 2,000 pages, from which Dr. Kissinger has withdrawn small portions of less than 100 pages because of personal and privacy matters. We anticipate that the Department historians will complete their review of the transcripts and summaries of the telephone conversations, as well as the other relevant documentation in the Kissinger collection, in 2002 or 2003.


Inasmuch as the *Foreign Relations* research now underway in the Kissinger collection will amount to a very thorough review by professional historians with broad subject-matter expertise that will result in the declassification and publication of a significant portion of the transcripts, it would seem sensible to allow this review to be completed before considering yet another review of the materials. During the course of this review, the Department's Historical Advisory Committee will be regularly informed of progress. On the basis of this review, experts at the Department, the National

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Archivist of the United States
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Archives, and the Library of Congress should work together to develop long-term public access arrangements with Dr. Kissinger that will meet the current legal status of all his papers as well as his understandable concerns and requirements for protecting non-official information and privacy considerations in the collection.

We at the Department look forward to working with you to resolve this matter in the best interests of all concerned.

Sincerely,



James P. Rubin